

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

John T. Lamont and Preston	§	
Poulter	§	
Plaintiffs	§	
v.	§	No. 3:21-cv-1176-K-BN
Dean Assaf a/k/a DA Talk and	§	
Victoria Kundert a/k/a Vikkiverse	§	
Defendants	§	

**Plaintiffs' Objection to Magistrate's Findings, Conclusions,
and Recommendation (Dkt. 50)**

Plaintiffs make the following objection to the Magistrate's Report and Recommendation entered on December 30, 2022 (Dkt. 50) concerning Defendant Victoria Kundert's motion to vacate default (Dkt. 45).

The Magistrate's report concluded that Kundert's default was not willful. Dkt. 50 at 7–8. But the evidence in the briefing showed that Kundert (a) knew she had been sued, (b) knew that a return of service had been filed, (c) knew that default had been entered, and (d) knew that a motion for default judgment had been filed. *See* Dkt. 47 at 15–16 (and authorities and evidence cited there). And even though Kundert bears the burden of proof on this issue, she did not present any evidence to suggest otherwise.

Although *pro se* litigants are entitled to some leniency, the rule in the Fifth Circuit has long been that a *pro se* litigant:

acquires no greater rights than a litigant represented by a lawyer, unless a liberal construction of properly filed pleadings be considered an enhanced right. Rather, such a litigant acquiesces in and subjects himself to the established rules of practice and procedure.

The burden of establishing excusable neglect is upon an appellant, even one proceeding *pro se*.

Biri v. Estelle, 660 F.2d 592, 593 (5th Cir. 1981) (citations omitted). In the case at bar, Kundert failed to carry that burden.

Accordingly, the Court should deny Kundert's motion to vacate default and grant Lamont and Poulter's motion for default judgment.

Respectfully submitted,



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Certificate of Service

I hereby certify that a true and correct copy of the foregoing was served on all parties through the Court's CM/ECF system, including those listed below, on January 13, 2023.

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Pro se defendant

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Pro se defendant



Jeremy M. Masten